IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.7.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.947 of 2007

Commissioner of Income Tax
Chennai. .. Appellant/Appellant

Vs.

M/s.New Ambadi Investments
Pvt. Ltd., No.2, Jehangir
Street, Chennai. .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 22.12.2006 in ITA No.1403/Mds/2001 for the assessment year 1994-95. against the order of the Commissioner of Income Tax (Appeals) V Chennai 34 for the Assessment year of 1994-95 in ITA No. 357/1996-97 dated 18.9.2001 against the Assessment order of Deputy Commissioner of Income Tax Special Range I Chennai in PAN/GIR.No.47-056/Cu/7170 dated 8.11.96.

For Appellant : Mrs.Pushya Sitaraman, Sr.S.C.(IT)

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

Whether the capital loss can be claimed in respect of transfer of rights issue in a case where the assessee sold its right to subscribe to partially convertible debentures - is the substantial question of law raised by the Revenue for our consideration in this appeal preferred against the order of the Income-tax Appellate Tribunal in ITA No.1403/Mds/2001 dated 22.12.2006, under the following facts and circumstances of the case.

2.1. The relevant assessment year is 1994-95. The assessee filed its return of income on 30.11.94 showing 'Nil' income. The case was processed on 26.10.95 accepting the same. In response to

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the notice under Section 143(2) of the Income-tax Act, 1961, the assessee filed the details as called for. The assessee, under the Capital Gains, claimed short term capital loss to the tune of Rs.22,42,053/- in respect of sale of 43,535 rights to Partically Convertible Debentures of EID Parry (I) Ltd. at the value of Rs.5/- to Tichai Investments. Pvt. Ltd. The details of the working are stated as hereunder:-

Sale proceeds of 43535 Right PCDs @ Rs.5/- to Tichai Invts. Pvt. Ltd.	:	217675
Less: Notional cost for 43535 Rights PCDs	:	2459728
		2242053

2.2. According to EID Parry (I) Ltd.'s Rights offer, for every 10 shares held, 5 PCD of Rs.150/- is issued and this would be converted into one equiry share of Rs.10/- each, plus Rs.60/- premium and balance would be the non-convertible debentures. In view of 1:2 ratio as above, for every right the corresponding drop in market value of the existing share would be Rs.28.25 x 2 = 56.50.

2.3. The assessee claimed the short term capital loss of Rs.22,42,053/- for the transaction on the ground that the resultant fall in the market value of the existing shares should be deducted from the amounts received, relying on the decision of the Apex Court in the case of Commissioner of Income-tax v. Miss.Dhun Dadabhoy Kapadia [(1967) 1963 I.T.R. 651]. But, the Assessing Officer held that the decision of the Apex Court in the case of Miss.Dhun Dadabhoy Kapadia [(1967) 1963 I.T.R. 651], referred supra, would not apply to the facts of the present case, as it is beyond any imagination that any asset in the form of right can have a negative value. However, he applied the judgment of the Apex Court to the extent of not computing any capital gain at all.

2.4. Aggrieved by the said order of the assessing officer dated 8.11.1996, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 18.9.2001, held that the market value of the rights issue has to be reckoned with regardless of whether the sale contribution of the rights is less than the notional loss or not. On appeal at the instance of the Revenue, the order of the Commissioner was confirmed by the Appellate Tribunal by order dated 22.12.2006 holding that the decision of the Apex Court is squarely applicable. Hence, the present appeal.

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3.1. In the case before the Apex Court in Miss.Dhun Dadabhoy Kapadia v. Commissioner of Income-tax [(1967) 1963 I.T.R. 651 (SC)], referred supra, the assessee, who was holding by way of investment 710 ordinary shares, renounced her right to all the 710 shares and realised certain amount and when that amount was sought to be wholly taxed as a capital gain, the assessee claimed that since the market value of the old shares fell down, resulting in a capital loss, she was entitled to set off against the capital gain realised by her and thus, the capital gain should be computed after deducting from that amount the value of the embedded right which became liquidated. The Apex Court, under the said facts and circumstances of the case, held that the assessee was entitled to deduct from the capital gain realised, the loss suffered by way of depreciation in the old shares, because to work out the capital gain or loss, the principles that have to be applied are those which are a part of the commercial practice or which an ordinary man of business would resort to when making computation for his business purposes.

3.2. Applying the ratio laid down by the Apex Court in the case of Miss.Dhun Dadabhoy Kapadia [(1967) 1963 I.T.R. 651 (SC)], referred supra, a Division Bench of the Bombay High Court in Commissioner of Income-tax v. Motichand Construction Co. Pvt. Ltd. [(2003) 261 I.T.R. 70], where the assessing officer held that since the assessee was holding the old shares as stock-in-trade, he is not entitled to claim loss under the head "Capital Gains", which, on appeal, was reversed by the Tribunal, held that the balance-sheet, profit and loss account and the computation tendered by the assessee before the Assessing Officer indicated that the old shares held as stock-in-trade were valued at cost and not at market price and thus, the Tribunal was right in allowing the loss.

4. In view of the decision of the Apex Court in Miss.Dhun Dadabhoy Kapadia v. Commissioner of Income-tax [(1967) 1963 I.T.R. 651 (SC)] and the decision of the Bombay High Court in Commissioner of Income-tax v. Motichand Construction Co. Pvt. Ltd. [(2003) 261 I.T.R. 70], referred supra, we find that the law is well settled on the point and therefore, we hold that the assessee is entitled to claim the capital loss that had arisen due to transfer of rights issue to partially convertible debentures.

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Finding no substantial question of law arises for consideration in this tax case appeal, the same stands dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
"B" Bench, Madras.
2.The Secretary, Central Board
of Direct Taxes, New Delhi.
3.The Commissioner of Income-
Tax (Appeals) V, Chennai.
4.The Deputy Commr. Of Income-tax,
Central Circle-I(1), Chennai.

+ 1 cc to Mrs. Pushya Sitaraman, Advocate SR No. 41067

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SR/24.7.2007

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